

**FILED**

**JUN 16 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARK ANTHONY BARRAGAN,

Defendant - Appellant.

No. 05-50178

D.C. No. CR-04-00175-NM-1

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Nora M. Manella, District Judge, Presiding

Submitted June 12, 2006<sup>\*\*</sup>

Before: FERNANDEZ, KLEINFELD and BERZON, Circuit Judges.

Mark Anthony Barragan appeals from his 168-month sentence imposed following his guilty-plea conviction for conspiracy to possess with intent to

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

distribute and to distribute cocaine, and conspiracy to possess with intent to distribute and to distribute methamphetamine, in violation of 21 U.S.C.

§ 846.

Barragan's constitutional challenges are foreclosed by prior decisions of this court. *See United States v. Kilby*, No. 05-30112, 2006 WL 891044, \*4 (9th Cir. 2006) (holding that a district court should resolve factual disputes at a *post-Booker* sentencing by applying the preponderance of evidence standard); *United States v. Dupas*, 419 F.3d 916, 918-21 (9th Cir. 2005) (holding that the retroactive application of the remedial opinion in *United States v. Booker*, 543 U.S. 220 (2005), did not violate either the ex post facto clause or due process). Therefore, we dismiss in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000) (stating that an appeal waiver is valid when it is entered into knowingly and voluntarily); *see also United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005) (holding that the changes in sentencing law imposed by *United States v. Booker*, 543 U.S. 220 (2005), did not render waiver of appeal involuntary and unknowing).

**DISMISSED.**